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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,701	03/29/2005	David R. Wardwell	20020019PCT-US	2061
7590		09/14/2007		
Antony P Ng Dillon & Yudell 8911 N Capital of Texas Hwy Suite 2110 Austin, TX 78759			EXAMINER CHANKONG, DOHM	
			ART UNIT 2152	PAPER NUMBER
			MAIL DATE 09/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,701

Applicant(s)

WARDWELL, DAVID R.

Examiner

Dohm Chankong

Art Unit

2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

- 1> Claims 1-12 are presented for examination.
- 2> This is a non-final rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 3> Claims 9-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 9-12 are directed towards a program product residing on a computer usable medium. Applicant's specification defines mediums to include transmission type media, such as analog or digital communication links.

It is the current position of the USPTO that such claims are directed towards non-statutory subject matter. Transmission type media such as links are not physical articles which are not structurally and functionally interconnected to the computer program in such a manner as to enable the program to act as a computer component and realize any functionality. Therefore, claims 9-12 are rejected under §101 for reciting non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4> Claims 1, 5, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claims 1, 5, and 9 lack proper antecedent basis: "said grouping criteria."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5> Claims 1 are rejected under 35 U.S.C §103(a) as being unpatentable over Mann et al, U.S Patent NO. 6,957,281 ["Mann"].

6> As to claim 1, Mann discloses a method for collating data in a distributed computer network having non-synchronous compute nodes, said method comprising:

receiving a set of data packets from a plurality of non-synchronous compute nodes, wherein each of said set of data packets is provided by one of said non-synchronous compute nodes [Figure 1 «item 210» | column 1 «lines 45-60» | column 4 «lines 52-60» where : Mann discloses receiving packets of different sessions at the controller, each session representing communications with a different network node];

inserting said data packets into a software container according to user predetermined rules for determining a logical order for said data packets [column 3 «lines 6-9 and 41-48» | column 4 «lines 30-51» | column 5 «lines 18-28» where : Mann's queue is analogous to the claimed software container];

locating common groups of said data packets within said container according to said user predetermined rules [column 3 «lines 41-48» where : Mann discloses grouping packets based on common session numbers];

protecting said container against incomplete groups of said data packets due to system anomalies or quality of service within said distributed computer network [column 5 «lines 18-28» | column 6 «lines 39-46» where : Mann discloses using sequence numbers to order the packets. Sequence numbers are well known in the art to help determine whether there are missing packets within the sequence of packets of a session]; and

outputting logical group of said data packets that represent an aggregate packet from said non-synchronous compute nodes after said grouping criteria has been met [column 3 «line 49» to column 4 «line 18» where : Mann's packet bundle is analogous to the claimed aggregate packet].

7> As to claims 5 and 9, they merely are directed towards an apparatus and computer program product on a medium, respectively, that implement the steps of the method of claim 1. Therefore, claims 5 and 9 are rejected for at least the same reasons set forth for claim 1.

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8> Claims 2-4, 6-8, and 10-12 are rejected under 35 U.S.C §103(a) as being unpatentable over Mann, in view of Turner et al, U.S Patent No. 6,907,041 ["Turner"].

9> As to claim 2, Mann does disclose inserting data packets into a software container but does not expressly disclose performing said insertion according to individual packet time reference. In the same field of invention, Turner is directed towards a communications network for resequencing packets using a packet time reference, aka a timestamp [column 3 «lines 31-47»]. Turner expressly discloses inserting said data packets into a software container according to individual packet time reference [column 4 «line 65» to column 5 «line 7»].

It would have been obvious to one of ordinary skill in the art to incorporate timestamps into Mann's insertion functionality. Use of timestamps enables the ability to better resequence packets into the correct order and to insure that they are transmitted in the correct order to the next destination in the network.

10> As to claim 3, Mann does disclose locating common groups of data packets within said container, but does not disclose doing so based on individual packet time reference. Turner discloses locating common groups based on individual packet time reference [column 4 «lines 56-59» | column 5 «lines 9-26» where : Turner's merging of different groups based on their time stamps is analogous to the claimed functionality].

It would have been obvious to one of ordinary skill in the art to have modified Mann

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to include the function of grouping packets based on packet time reference. Turner discloses that the ability to group based on time stamps benefits a system by enabling resequencing of a multiplicity of packets into a sorted order [column 4 «lines 56-59» | column 5 «lines 14-18»].

11> As to claim 4, Mann discloses outputting logical group of said data packets that represent time-synchronous packets from said non-synchronous compute nodes after said grouping criteria has been met [column 4 «lines 1-17 and 52-60» | column 5 «lines 18-28» | column 6 «lines 39-46» where : Mann discloses outputting a bundle of packets based on the packet's session number and sequence number within that particular session. Mann's packets are therefore synchronous based on their sequence and session numbers].

12> As to claims 6 and 10, 7 and 11, and 8 and 12, they merely are directed towards an apparatus and computer program product on a medium, that implement the steps of the method of claims 2, 3, and 4 respectively. Therefore, claims 6 and 10, 7 and 11, and 8 and 12, are rejected for at least the same reasons set forth for claims 2, 3, and 4.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Nugent, U.S Patent No. 5,317,564;

Chapman et al, U.S Patent No. 6,246,684;

Rowley et al, U.S Patent Publication No. 2003|0028662;

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Milliken, U.S Patent Publication No. 2003|0046388;

Cochran et al, U.S Patent No. 6.701.324;

Rijckaert et al, U.S Patent No. 6.801.544;

Schweitzer et al, U.S Patent No. 6.963.912;


Huntington et al, U.S Patent No. 7.149.189;

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dohm Chankong whose telephone number is 571.272.3942. The examiner can normally be reached on Monday-Friday [8:30 AM to 4:30 PM].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571.272.3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DC


9/12/17
BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER